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**IN THE**  
**COURT OF APPEALS OF INDIANA**

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INDIANA PATIENT'S COMPENSATION )  
FUND, )

Appellant-Defendant, )

vs. )

RUTH HOEFLIN-OAKLEY, ROBERT )  
OAKLEY, and FAITH OAKLEY, )

Appellees-Plaintiffs. )

No. 49A02-0607-CV-565

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APPEAL FROM THE MARION CIRCUIT COURT  
The Honorable Theodore M. Sosin, Judge  
Cause No. 49C01-0503-CT-10173

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**April 27, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**FRIEDLANDER, Judge**

Due to malpractice committed by Dr. Carol Borden during the birth of their daughter, Ruth Hoeflin-Oakley and Robert Oakley (the Oakleys) initiated malpractice proceedings individually and on behalf of their daughter, Faith Oakley. They ultimately settled with Dr. Borden for the statutory limit of \$250,000. The Oakleys then filed an action against the Indiana Patient's Compensation Fund (the Fund) seeking payment of excess damages. The Fund paid the statutory maximum of \$1,000,000 for Faith's injuries, but disputed whether Ruth and Robert were entitled to recover under separate statutory caps for their alleged emotional distress injuries. The case proceeded to a bench trial with respect to Ruth and Robert's claims against the Fund. The trial court determined that Ruth, Robert, and Faith suffered three distinct injuries as a result of the health care provider's single act of malpractice and, therefore, were entitled to recover under separate caps. Accordingly, the court awarded \$550,000 to Ruth for her emotional distress injury and \$400,000 to Robert for his emotional distress injury. On appeal, the Fund presents three issues of which we find the following restated issue dispositive: Were Ruth and Robert entitled to recover under separate caps pursuant to the Medical Malpractice Act (the Act) for emotional distress injuries they suffered as a result of the malpractice that led to Faith's physical injuries?

We reverse.

On July 6, 2001, Ruth arrived at Floyd Memorial Hospital for the induction of labor for the delivery of Faith. After laboring for over twenty-seven hours, Ruth began to

deliver the ten-pound-fifteen-ounce baby. Robert was present for and witnessed Faith's delivery. During the course of the delivery and after her head emerged, Faith's body became caught in the birth canal. Dr. Borden, the treating physician, was eventually able to complete the delivery by pulling hard on Faith's head.

Upon delivery, Faith had bruising on her right side and no movement in her right arm. Dr. Borden advised the Oakleys that Faith had suffered a brachial plexus injury, but that these injuries usually resolved within two weeks. After discharge, the Oakleys sought medical treatment for Faith's injury from specialists. These consultations revealed that Faith's injury was severe and likely permanent. Faith has undergone multiple surgical procedures to address her injury. She still has virtually no use of her right arm, which hangs limply at her side and is significantly shorter than her left arm.

In August 2002, the Oakleys, individually and on behalf of Faith, filed a proposed complaint for damages with the Indiana Department of Insurance. In addition to the injuries suffered by Faith, the Oakleys sought compensation for their own emotional distress. After Dr. Borden settled the claim for the statutory maximum allowed against the provider (\$250,000) in March 2005, the Oakleys petitioned for payment of excess damages from the Fund. The Fund disputed whether the Act permitted Ruth and Robert to obtain separate recoveries for their emotional distress injuries, but agreed that Faith was entitled to excess damages. Thus, the Fund promptly settled Faith's excess-damages claim for the statutory maximum of \$1,000,000 in June 2005.<sup>1</sup>

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<sup>1</sup> The Act provides that the "total amount recoverable for an injury or death of a patient" is limited to \$1,250,000 "for an act of malpractice that occurs after June 30, 1999." Ind. Code Ann. § 34-18-14-

A bench trial was subsequently held with regard to whether Ruth and Robert's emotional distress claims were separate and distinct from Faith's claim. The trial court found in favor of the Oakleys, finding in part as follows:

[T]he Oakleys have suffered three distinct injuries as a result of the health care provider's single act of malpractice: (a) Faith Oakley's permanent brachial plexus injury, which encompasses Faith's personal injury claim as well as her parents' loss of services claim; (b) Ruth Hoeflin-Oakley's emotional distress injury resulting from her direct involvement in the traumatic birth of her daughter. See *Shuamber v. Henderson*, 579 N.E.2d 452 (Ind., [sic] 1991); and (c) Robert Oakley's emotional distress injury resulting from his direct involvement in the traumatic birth of his daughter. See *Groves v. Taylor*, 729 N.E.2d 569 (Ind. 2000).

*Appellant's Appendix* at 11. Concluding that "the Oakleys [could] seek recovery under separate caps for their distinct, emotional distress", the trial court awarded damages to Ruth and Robert in the amount of \$550,000 and \$400,000 respectively. *Id.* The Fund now appeals.

The Fund summarizes its argument as follows:

In the context of a medical malpractice action, parents may be entitled to assert a claim for emotional distress based upon the injury to their child. Upon proper proof, parents may also be entitled to recover damages on that claim. However, because that claim is derivative of their child's claim, any damage award for that emotional distress must be included in the damages awarded to the child, subject to the statutory cap on the same, and cannot serve as the basis of a separate and independent damage award to the parents.

*Appellant's Brief* at 12. Thus, the Fund argues that once Faith was awarded the statutory maximum for her injury, Ruth and Robert were not entitled to any additional damages for

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3(a)(3) (West 1999). A qualified health care provider, such as Dr. Borden, is only liable for up to \$250,000 for each occurrence of malpractice. I.C. § 34-18-14-3(b). Damages in excess of the total owed by all liable health care providers are paid by the Fund. I.C. § 34-18-14-3(c).

their alleged emotional distress. Relying on the trial court’s findings of fact, conclusions of law, and judgment (which they drafted), the Oakleys respond that because they suffered “independent, emotional distress injuries” as a result of the malpractice in this case, they are each “entitled to recover under a separate cap for the injury.” *Appellees’ Brief* at 2.

While this case presented an issue of first impression at the time the parties filed their appellate briefs, such is no longer the case. We have recently found in favor of the Fund on this very issue. In *Indiana Patient’s Compensation Fund v. Butcher*, No. 49A02-0603-CV-223 (March 16, 2007), we concluded as follows:

[T]he only issue we must address is whether Eric and Dorothy are each entitled to receive maximum damages for their [emotional distress] injuries under separate caps as provided by the Act. We conclude they are not. We hold that although Eric and Dorothy, individually and on behalf of Samuel, [their deceased newborn son,] have valid claims for which they may be entitled to recover, that recovery is limited to the statutorily-dictated cap for “the injury or death suffered by the actual victim of the malpractice.” *Goleski v. Fritz*, 768 N.E.2d 889, 891 n.1 (Ind. 2002). Here, the actual victim of the malpractice is Samuel.

*Id.*, slip op. at 11;<sup>2</sup> see also *Indiana Patient’s Compensation Fund v. Winkle*, No. 49A05-0511-CV-653, slip op. at 13 (March 16, 2007) (“[i]n their negligent infliction of

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<sup>2</sup> In that case, we relied in large part upon our Supreme Court’s statements in *Goleski* and explained: Clearly, the *Goleski* court believed that the ability to file a medical malpractice action should be available to a wide range of potential claimants, derivative or otherwise, and the court does not seem to take issue with the possibility that these varied claimants could recover provided they are able to meet their burden of proof. What *Goleski* appears to curb is the number of maximum recoveries a claim may produce, and it limits the number of maximum recoveries to the number of injuries or death “suffered by the *actual victim of the malpractice*.” [*Goleski v. Fritz*, 768 N.E.2d at 891 n.1] (emphasis added). In other words, myriad potential claimants may bring a malpractice action, and any successful plaintiff may be awarded damages. However, the actual recovery for those damages must be limited to one statutory maximum for each actual victim of malpractice who

emotional distress claims, Lori and Darrin may recover all emotional damages that were suffered as a result of the miscarriage; however, those emotional damages must be recovered under the single statutory cap allotted to Lori”).

Here, neither Ruth nor Robert was the actual victim of the malpractice, and they may not recover under their own statutory caps. As Faith has already been awarded the statutory maximum recovery for her injury, her parents cannot recover additional excess damages from the Fund. The trial court’s separate awards to Ruth and Robert are, therefore, reversed.

Judgment reversed.

BAKER, C.J., and CRONE, J., concur.

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suffers an injury or death. In this case, the only actual victim of Kumar’s and SCCH’s malpractice was Samuel.  
*Id.*, slip op. at 16.